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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

MELISSA LEIJON, Plaintiff and Appellant, v. SHELDON PRAISER et al., Defendants and Respondents.	C087574 (Super. Ct. No. 164984)

Plaintiff Melissa Leijon (plaintiff) and her husband (collectively, the Leijons) are members of an eco-friendly residential community in the Central American country of Belize. She claims that while living in the community, an employee of the Belizean corporation that owns and operates the property threatened, harassed, and assaulted her and her family, causing property damage and severe emotional distress. The Leijons filed suit in California against the corporation, individual corporate officers, and the Belizean employee who allegedly threatened and assaulted them.

The defendant corporation and its officers moved to stay or dismiss the action on the ground of inconvenient forum. On August 25, 2017, the trial court granted the motion based on a forum selection clause in their shareholder agreement providing that any litigation must be brought in Belize. Although the court declined to dismiss the

action, it granted defendants' request for a stay pending initiation of litigation in Belize. Neither plaintiff nor her husband appealed the stay order.

During a May 2018 hearing to review the status of the litigation in the alternate forum, the Leijons informed the court that they had no intention of filing an action in Belize and instead would appeal the August 2017 order. The court then dismissed the action without prejudice.

Plaintiff timely appealed the May 2018 order dismissing the action. She argues that the trial court erred in dismissing the action because (1) it relied on an invalid forum selection clause; (2) California has a direct interest in the outcome of the litigation; (3) California is a convenient forum in that the corporate officers live in California and operate the corporation as their "alter ego" from California; (4) Belize is a "gravely inconvenient" forum in that plaintiff and her family would be at risk of bodily harm or death if forced to return to Belize; (5) defendants violated due process by knowingly submitting false evidence; and (6) the attorney representing the defendants had an impermissible conflict of interest.

We conclude that plaintiff's failure to appeal the August 2017 order granting the stay motion precludes her from challenging the merits of that order. The only order properly before us on appeal is the dismissal order. That order was based, not on the forum selection clause, but on the Leijons's firm refusal to comply with the previous, unappealed order staying the action pending initiation of litigation in Belize. Plaintiff has failed to show that the trial court abused its discretion by issuing the dismissal order. We therefore affirm the judgment, but deny defendants' request to sanction plaintiff for taking a frivolous appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Hummingbird Haven, Ltd., is a Belizean corporation that owns and operates an eco-friendly residential community in Belize. Members wishing to join the community purchase shares in the corporation, giving them the right to build a home

upon an assigned lot and share in the community owned land and resources. A "Basic Shareholders Agreement" (Shareholders Agreement), to which members must agree, outlines the principal rights and obligations of members in the community.

The Leijons became members of the community in 2013, and moved to the community with their two children in January of 2014. Shortly after arriving, the Leijons claim they began to have conflicts with Jaime Perez (Perez), another member of the community, who was employed as the property's "caretaker." The Leijons allege that Perez is a "vicious and dangerous person," with a history of "criminal behavior and violent tendencies."

The Leijons allege that they began to fear Perez and voiced their fears to Hummingbird Haven's executive officers, but the officers did nothing to curb Perez's troubling behavior and insisted that the Leijons continue to work with him. The Leijons claim that Perez, unchecked, became increasingly hostile and threatening toward them.

Terrified that Perez would injure or kill them, the Leijons again reported their fears to Hummingbird Haven's officers, but still nothing was done. Thus, on or around January 29, 2015, convinced that Perez was trying to kill them, the Leijons fled Belize, leaving most of their belongings behind.

In 2015, the Leijons filed suit in California, naming as defendants Hummingbird Haven, Perez, and the individual officers who allegedly comprised Hummingbird Haven's "executive committee"—Sheldon Praiser, Paul O'Rourke-Babb, and Robert Trausch (the individual defendants). The Leijons's third amended complaint alleges five causes of action, seeking economic and noneconomic damages, for negligent hiring, negligent retention, negligent infliction of emotional distress, intentional infliction of emotional distress, and assault.

In December 2015, the individual defendants filed a motion to stay or dismiss the action on the ground of inconvenient forum under Code of Civil Procedure sections

418.10, subdivision (a)(2), and 410.30, subdivision (a).[1] They argued that (1) the Leijons signed the Shareholders Agreement, mandating that any litigation be brought in Belize; and (2) even if the forum selection clause did not apply, the action should be stayed or dismissed under the doctrine of forum non conveniens. The trial court denied the motion without prejudice, indicating that it may reconsider the issue after the facts are more fully developed.

In March 2017, after taking discovery, Hummingbird Haven and the individual defendants (collectively, defendants) filed a second motion seeking to stay or dismiss the action on grounds of inconvenient forum. This time the court granted the motion. In an order entered on August 25, 2017, the court ruled that the evidence produced during discovery showed that the Leijons signed the Shareholders Agreement with Belizean forum selection and choice of law clauses. The court concluded that the claims at issue fell within the scope of the forum selection clause and that the Leijons failed to meet their "heavy burden" to show that litigating in Belize would be gravely inconvenient.[2]

The court was "mindful, however, of the significant risk that litigating in Belize" would present to the Leijons if their allegations were true. Partly for this reason, the court granted the motion "only insofar as it requests a stay of the proceedings so that the parties can initiate litigation in Belize." The court retained jurisdiction to lift the stay and continue the case in California if efforts to litigate in Belize revealed grave inconvenience.

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[1] Further undesignated statutory references are to the Code of Civil Procedure.

[2] Because the court granted the motion based on the forum selection clause, it declined to address whether a stay or dismissal would be warranted under the forum non conveniens doctrine.

On February 2, 2018, the court held a status conference to review the status of "litigation in the alternate forum."[3] The Leijons still had not filed an action in Belize, so the court set a further status hearing for May 4, 2018. At that hearing, the "[Leijons] stated that they did not intend on filing an action in Belize," and that they instead wished to "file an appeal of the August 25, 2017 order."

After the May 4, 2018 status hearing, the court issued an unsigned minute order stating that the case was "dismissed without prejudice at the request of [the Leijons]." On June 29, 2018, each of the Leijons filed a notice of appeal, purporting to appeal the "judgment of dismissal." Mr. Leijon's appeal subsequently was dismissed for failure to pay the required filing fees.

On July 6, 2018, the court issued a signed order dismissing the third amended complaint.

DISCUSSION

I

Issues Before this Court on Appeal

We begin by clarifying the scope of the issues properly raised by this appeal. Since we may exercise subject matter jurisdiction only when there is an appealable order or judgment, it is incumbent upon an appellant to explain in the opening brief what judgment or order is being appealed and why the judgment or order is, in fact, appealable. (Cal. Rules of Court, rule 8.204; *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.)[4]

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[3] During the period between entry of the August 2017 order and the February 2018 status conference, the Leijons filed a substitution of attorney relieving their attorney as counsel of record and substituting themselves as pro se litigants.

[4] Further rule references are to the California Rules of Court.

Plaintiff's opening brief muddles the issues on appeal and the scope of our review. She repeatedly asserts that the trial court granted "summary judgment" despite the existence of a "triable issue of fact." There is no record of a summary judgment motion being filed in this action. Thus, we disregard plaintiff's arguments to the extent they relate to a nonexistent order granting summary judgment. Additional confusion arises from the fact that there were two appealable orders issued in this case, only one of which was timely appealed.

The first appealable order was the August 25, 2017 order granting defendants' motion to stay the action for inconvenient forum. (§ 904.1, subd. (a)(3) [an appeal may be taken from an order "granting a motion to stay the action on the ground of inconvenient forum"].) Plaintiff did not appeal this order. A notice of appeal must be filed on or before the earliest of (1) 60 days after the clerk serves a notice of entry of judgment or filed-endorsed copy of the judgment; (2) 60 days after a party serves a notice of entry of judgment or filed-endorsed copy of the judgment; or (3) 180 days after entry of judgment. (Rule 8.104(a)(1).)[5] Here, the deadline to appeal the August 2017 order expired in late October 2017, or, at the very latest, the end of February 2018. Plaintiff did not notice any appeal until June 2018. By that time, it already was too late to appeal the August 25, 2017 order.

Because plaintiff failed to timely appeal the August 25, 2017 order, we are precluded from reviewing the merits of that ruling.[6] (*Maughan v. Google Technology*,

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[5] For purposes of this rule, " 'judgment' includes an appealable order if the appeal is from an appealable order." (Rule 8.104(e).)

[6] In a supplemental brief, plaintiff argues that her failure to appeal the 2017 order should not preclude her from appealing the 2018 order. We agree, but plaintiff misses the point. Because plaintiff did not appeal the 2017 order granting the stay, the merits of that ruling are not before us. Even if we were to reverse the 2018 order and remand this matter to

Inc. (2006) 143 Cal.App.4th 1242, 1247 [if a judgment or order is appealable, the aggrieved party must timely appeal or forever lose the opportunity to obtain appellate review]; *Sy First Family Ltd. Partnership v. Cheung* (1999) 70 Cal.App.4th 1334, 1344 [a reviewing court is not authorized to review any decision from which an appeal might have been taken but was not].)

The second appealable order was the July 6, 2018 order of dismissal, which is appealable as a final, written order of dismissal under section 581d. (§ 904.1, subd. (a)(3); see also *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 388.) Plaintiff timely appealed the July 6 dismissal order,[7] thus we will review the merits of that order.

II

Plaintiff's Challenges to the July 6 Order of Dismissal

Although we conclude that plaintiff has timely appealed the July 6 dismissal order, plaintiff misapprehends the nature and scope of that order and, as a result, challenges it on grounds that are unrelated to the reason it was issued. She interprets the July 6 order as reconsidering the merits of the motion seeking to stay or dismiss the action on grounds of inconvenient forum and infers that the court, after initially granting a stay, subsequently reconsidered and decided to grant the motion to dismiss on grounds of inconvenient forum. The record does not support plaintiff's interpretation.

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the trial court, the action would remain stayed pending initiation of litigation in Belize by the Leijons, which the Leijons have announced they will not do.

[7] As a technical matter, the notice of appeal, filed on June 29, 2018, purports to appeal the May 4, 2018 minute order. However, because the May 4, 2018 order is unsigned, it is not appealable. (§ 581d; *Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 229; *Palazzi v. Air Cargo Terminals, Inc*. (1966) 244 Cal.App.2d 190, 192.) Following the rule that notices of appeal are to be liberally construed to protect the right of appeal if it is reasonably clear what plaintiff was trying to appeal from, we construe the appeal to embrace the signed July 6, 2018 order, and thereby save the prematurely filed notice of appeal. (*Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1249; rule 8.104(d).)

There is nothing in the July 6 order to suggest that the court intended to revise its prior order granting a stay "so that the parties can initiate litigation in Belize." Rather, the record plainly shows that the court dismissed the case solely because the Leijons refused to initiate litigation in Belize. Because the language of the July 6 order is important, we quote the substantive portion of that order in full below:

"Defendant Hummingbird Haven, Ltd. had filed a motion on March 20, 2017 for an order dismissing this action or in the alternative, staying all further proceedings. Sheldon Praiser, Robert Trausch and Paul O'Rourke-Babb joined in the motion. The Court made an order filed on August 25, 2017 staying this action pending the initiation of litigation in Belize. The August 25, 2017 ruling set a status hearing for February 2, 2018. At that time [the Leijons] had not filed an action in Belize; a further status hearing was set for May 4, 2018. *During the hearing on May 4, 2018 [the Leijons] stated that they did not intend on filing an action in Belize,* and that they did intend to file an appeal of the August 25, 2017 order.[8] [¶] IT IS ORDERED that [the Leijons's] Third Amended Complaint is dismissed without prejudice." (Italics added.)

The only reasonable interpretation of this order is that the trial court dismissed the action because the Leijons refused to litigate in Belize. In her opening and reply briefs, however, plaintiff makes no attempt to explain how the trial court abused its discretion in dismissing this action based on the Leijons's refusal to litigate in Belize. All of plaintiff's arguments instead are directed to the merits of the August 2017 order granting a stay, which, because it was not appealed, we lack jurisdiction to review.

In supplemental briefing, plaintiff argues—for the first time—that the trial court abused its discretion by dismissing the action without properly considering the factors in

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[8] As noted above, by the time of the May 4 status hearing it was already too late for the Leijons to appeal the August 25, 2017 order. Thus, regardless of plaintiff's intent at the hearing, she could not then—and cannot now—appeal the August 25, 2017 order.

rule 3.1342.[9] However, plaintiff's argument, which merely cites a general legal principle (rule 3.1342) without relating it to any evidence in the record, is insufficient to establish an abuse of discretion.

In reviewing the trial court's order, we begin with the presumption that the order is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) An appellant has the burden to affirmatively show prejudicial error by presenting legal authority and reasoned analysis on each point made, supported by appropriate citations to the material facts in the record. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) As the party asserting error, it is an appellant's duty to supply a record adequate to support any claim of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) In the absence of an adequate record, we must presume the trial court followed the law and that the trial court's decision is correct. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 698; see also *Independent Roofing Contractors v. California Apprenticeship Council* (2003) 114 Cal.App.4th 1330, 1336 [it is the appellant's obligation to demonstrate error in trial court's reasoning]; *Denham, supra,* 2 Cal.3d at p. 564 [all intendments and presumptions are indulged to support matters on which the record is silent]; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768 [appellate court is not required to search the record on its own seeking error].)

Plaintiff also did not provide us with a transcript of the May 4 status hearing. This precludes us from determining whether the trial court abused its discretion in deciding to dismiss the action. (*Rhule v. WaveFront Technology, Inc.* (2017) 8 Cal.App.5th 1223,

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[9] Rule 3.1342 describes factors that a court must consider in ruling on a motion for discretionary dismissal.

1228-1229.) In the absence of an adequate record of what transpired at the hearing, we must presume the trial court followed the law.[10]

Plaintiff has failed to supply an adequate record to rebut the presumption that the trial court followed the law when it dismissed this action based on the Leijons's refusal to initiate litigation in Belize. Therefore, we affirm.

III

Sanctions

Claiming this is a frivolous appeal, defendants request that we impose $13,500 in sanctions against plaintiff under rule 8.276(a)(1). We do not find an award of sanctions to be warranted under the circumstances of this case, and therefore deny the request.

DISPOSITION

The order of dismissal is affirmed. Defendants' motion for sanctions against plaintiff for taking a frivolous appeal is denied. Costs on appeal are awarded to defendants. (Rule 8.278(a).)

KRAUSE, J.

We concur:

DUARTE, Acting P. J.

RENNER, J.

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10 Plaintiff's status as a pro se litigant does not excuse the defects in her appeal. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) A litigant has a right to act as his or her own attorney but, in doing so, is held to the same standards as parties represented by counsel. (*People v. $17,522.08 United States Currency* (2006) 142 Cal.App.4th 1076, 1084.)